



## POLICE DEPARTMENT

October 31, 2011

MEMORANDUM FOR: Police Commissioner

Re: Detective Bobby Partap  
Tax Registry No. 895827  
Narcotics Borough Brooklyn North  
Disciplinary Case No. 86557/10

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The above-named member of the Department appeared before me on June 15, 2011, charged with the following:

1. Said Detective Bobby Partap, while assigned to the Drug Enforcement Task Force, on or about January 2, 2009, January 6, 2009 and January 26, 2009, did utilize a Department computer in an inappropriate manner, to wit: said Detective downloaded pornographic material from the internet which was not related to the official business of the Department.

P.G. 219-14, Page 1, Paragraph 2 – DEPARTMENT PROPERTY  
DEPARTMENT COMPUTER SYSTEMS

2. Said Detective Bobby Partap, while assigned as indicated in Specification # 1, on or about February 4, 2009, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Detective destroyed his command's original Movement Sheet without authority to do so, and printed a new sheet upon which he wrote movement information previously entered on the original Movement Sheet by two other members of the service.

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT-PROHIBITED  
CONDUCT  
GENERAL REGULATIONS

3. Said Detective Bobby Partap, while assigned as indicated in Specification # 1, on or about February 13, 2009, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Detective scheduled to perform a tour of 1000 hours to 1800 hours tour of duty changed his tour without permission and performed an unauthorized tour of duty from 0600 hours to 1400 hours.

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P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT PROHIBITED  
CONDUCT  
GENERAL REGULATIONS

4. Said Detective Bobby Partap, while assigned as indicated in Specification # 1, on or about the date indicated in Specification # 1, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Detective while performing the unauthorized tour indicated in Specification # 2, used Department office equipment to superimpose his face onto family photographs belonging to a Drug Enforcement Administration Agent assigned to Detective's command without permission to do so.

P.G. 203 10, Page 1, Paragraph 5 PUBLIC CONTACT-PROHIBITED  
CONDUCT  
GENERAL REGULATIONS

5. Said Detective Bobby Partap, while assigned as indicated in Specification # 1, on or about December 12, 2008 through January 11, 2009, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Detective failed to submit his Night Shift Differential Request-Uniform report in a timely manner when he submitted some of the reports two (2) years after the date of the actual performance of the night shift.

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT-PROHIBITED  
CONDUCT  
GENERAL REGULATIONS

The Department was represented by Michelle Alleyne, Esq., Department Advocate's Office, and Respondent was represented by James Moschella, Esq.

Respondent, through his counsel, entered a plea of Guilty to Specification Nos. 1, 2, 3 and 4; and a plea of Not Guilty to Specification No. 5. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty.

SUMMARY OF EVIDENCE PRESENTEDThe Department's Case

The Department called Sergeant Michael Rothenbucher as a witness

Sergeant Michael Rothenbucher

Rothenbucher, an 11-year member of the Department, is currently assigned to the Internal Affairs Bureau (IAB). He testified that during the course of an investigation it was discovered that Respondent had downloaded pornographic material onto his Department computer in January 2009.

It was also discovered that Respondent failed to submit his Night Shift Differential Request forms [Respondent's Exhibit (RX) A, blank copy of form] in a timely manner. Rothenbucher explained that night shift differential is when a member of the service gets paid extra for working a late tour. It is common practice for members of the service to submit their requests for night shift differential either during the month that they worked the late tour or the month immediately thereafter, and it usually takes the Department a month or two to process the request forms. With respect to Respondent, however, payroll records showed that on several occasions he was paid for night shift differential years after he earned it. [Department's Exhibit 1 is a copy of Respondent's pay inquiry, showing that the night shift differential Respondent earned in September 2005 was not paid to him until December 2008.]

In a December 2009 interview, Respondent stated that a detective in payroll had informed him that requests for night shift differential can be submitted years late, and he wanted to submit his requests before he retired so as to increase his pension. Respondent

also stated that his commanding officer wrote a memorandum on his behalf so that he could submit his requests years later, but Respondent never presented Rothenbucher with a copy of the memorandum.

Other misconduct that Rothenbucher discovered was that Respondent once changed his tour without getting permission from a supervisor, destroyed his command's Movement Log and printed a new one to take its place without authorization, and used Department equipment to Photoshop a photograph to place his head on someone else's body. About the unauthorized tour, Rothenbucher explained that Respondent was scheduled to work from 10:00 a.m. to 6:00 p.m., but he started his tour four hours early.

On cross-examination, Rothenbucher agreed that Respondent had on previous occasions been granted authorization to work a 6:00 a.m. to 2:00 p.m. tour. Respondent's supervisor, Sergeant Hoehl, indicated to Rothenbucher that Respondent's unauthorized tour change could be handled with a Command Discipline (CD).

To the best of Rothenbucher's recollection, there was nothing of a sexual nature with respect to the Photoshopped photograph that Respondent made. Respondent merely superimposed his face over another man's face in a wedding picture.

With respect to the destruction of the Movement Log, Rothenbucher believed that Respondent did it because "he was blocked out by other detectives, meaning . . . that [Respondent] had gone somewhere and forgot to sign himself out." To Rothenbucher's recollection, the information contained in the original Movement Log was accurately transcribed by Respondent onto the new log that he created.

When a member of the service submits his request for night shift differential, the form gets signed by the member's commanding officer and timekeeper before getting

sent to the central payroll office. Rothenbucher never recovered Respondent's Night Shift Differential Request form for September 2005, so it cannot be known for certain exactly when Respondent submitted the form. Rothenbucher agreed, however, that the latest Respondent submitted it was October or November of 2008 since it would have taken a month or two to process and payment was made in December of that year.

During the December 2009 official Department interview, Respondent stated that at some point in 2005 a new sergeant in the Auto Crime Division (ACD) told him that if he did not submit the missing Night Shift Differential Request form he would not be allowed "to go out." Off the top of his head, Rothenbucher did not know which specific Patrol Guide provision a member of the service violates by holding onto a Night Shift Differential Request form for three years.

Rothenbucher explained that the charges at issue in this case came to light as IAB was investigating an unrelated, and ultimately unsubstantiated, matter. He confirmed that with regard to the downloaded pornographic material, nobody complained about being offended by the material or that Respondent spent his work days looking at the material.

On redirect examination, Rothenbucher confirmed that it is not uncommon for an IAB investigation into one allegation of misconduct to uncover other acts of misconduct.

On recross-examination he confirmed that Respondent's supervisor, Hoehl, knew about the unauthorized tour change, destroyed Movement Log, and Photoshopped picture before the IAB investigation commenced, and that Hoehl did not initiate an IAB investigation into those acts of misconduct.



Respondent's Case

Respondent testified in his own behalf.

Respondent

Respondent, a 22-year member of the Department currently assigned to Narcotics Borough Brooklyn North, was assigned to the Drug Enforcement Task Force (DETF) between July 2007 and February 24, 2009. He has held the rank of detective, second grade, since 2005. Prior to joining the Department, Respondent served in the United States Marine Corps from 1982 until 1988.

On February 13, 2009, Respondent worked a 6:00 a.m. by 2:00 p.m. tour, a tour he believed he was authorized to do. On that date, he "played a joke" on one of his co-workers, Special Agent Person A. Specifically, he used Photoshop to superimpose an image of his face onto the face of Person A's husband in two framed 5x7 photographs that Person A kept on her desk. In order to do this, he used a scanner that was in his office. The scanner was not Department equipment and was used by everyone for personal business. Respondent worked on this project during breaks from work, and he spent in total approximately 20 minutes on it. Respondent did not believe Person A would be offended by the image he produced. Person A wanted to appear at trial to testify on his behalf, but she was unable to attend because of a family medical matter.

Respondent left work at 2:00 p.m. that day, but a couple hours later Hoehl called to ask him why he had changed his tour. Respondent reminded Hoehl that even though his regularly scheduled tour began at 10:00 a.m. he had received authorization to start his tour at 6:00 a.m. as often as twice a week so that he could go to his off-duty employment.

According to Respondent, Hoehl granted this authorization via a May 2008 email, and he (Respondent) had started his tour at 6:00 a.m. twice a week almost every week. Because February 13, 2009 was only the second time that he started his tour early during that week, he assumed that he had authorization to do so. He did not specifically ask Hoehl if he could start his tour early that day. Respondent was on vacation the following week. Upon his return from vacation he was transferred out of his unit. He has not been assigned to any enforcement activity since. [RX B is a copy of an email from Hoehl to Respondent, dated May 23, 2008. It reads, "On days where you will be working your off duty employment, you may work the 6x2 tour that you requested. . . . Please email me in advance when you need to reschedule your tours for your off duty employment."]

Respondent testified that when he started his assignment at DETF in July 2007, he got salvaged computers from the Management Information Systems Division to use temporarily while he waited for access to the federal Drug Enforcement Agency computer system that other DETF members worked on. Later, after he got access, he kept the salvaged computers at his desk to check personal e-mail. In January 2009, he downloaded pornographic material onto one of those computers. He explained that he downloaded an issue of Playboy magazine because it contained an article on how drugs were bypassing the United States and being transported directly from South America to Europe because of Europe's higher exchange rate. Respondent wanted to share the article with his co-workers. He conceded, however, that in addition to the drug-related article, pornographic images unrelated to official business were also downloaded.

With regard to the destruction of a Movement Log, Respondent stated that at approximately 11:00 a.m. on February 4, 2009, Hoehl assigned him to go out with

Immigration and Customs Enforcement. Believing that he was the first one out of the office that day and that his entry would be the first in the Movement Log, Respondent typed his location onto a Movement Log template he had on his computer and printed out the page. When he subsequently realized that other members had made log entries before him, he transcribed the previous entries "word for word" from the original Movement Log onto the new one he had created. Respondent did not believe at that time that he was acting inappropriately, and he informed Hoehl about what he had done. Hoehl initialed the new Movement Log, "show[ing] that he understood what [Respondent] had [done] and why." In hindsight, Respondent recognized he should not have destroyed the original Movement Log and created a new one in its place.

With respect to his alleged untimely submission of his Night Shift Differential Request forms, Respondent explained that in August 2005, while assigned to ACD, a new supervisor in the command directed him to submit his outstanding request forms. Because Respondent did not maintain an Activity Log, he had to go to the clerical office and review the old roll calls in order to fill out the forms. Within two months of receiving the order, he submitted all of his forms and had them signed by his timekeeper and commanding officer. He was transferred out of ACD in 2007. He could not explain why he was not paid for the night shift differential until December 2008.

During cross-examination, Respondent testified that he could not recall if he sent Hoehl an email in advance about working an early tour on February 13, 2009. He explained that had he sent an email to Hoehl, it would have been out of the ordinary to receive any sort of confirmation in return. Although Respondent stated in an official Department interview that he did not have authorization to do a tour change on the day in



question, he contended at trial that his tour was authorized according to the agreement he had previously made with Hoehl.

Respondent agreed that in contrast to the issue of Playboy magazine, the Kim Kardashian sex tape and an edition of Hustler magazine that he also downloaded onto his Department computer did not have any relevance to his job. He never viewed the sex tape.

Regarding his alleged untimely submission of his Night Shift Differential Request forms, Respondent explained that he did not submit his forms within a month of earning the pay because he did not believe he was required to do so. He further explained that initially he did not intend on submitting the forms at all because the pay was insubstantial. In addition, preparation of the forms would have required him to spend time reviewing old roll calls. It was not his intention to hold onto the forms until he got closer to retirement. He reiterated that he submitted the forms at issue in 2005, shortly after he received the order from a supervisor, but he could not recall the specific date. The supervisor told him that he would not be able to get overtime unless he submitted the paperwork.

Upon further questioning, Respondent confirmed that it would have been possible to make an omitted entry in the Movement Log. He stated that superimposing photographs was a joke that many people played on each other in his unit. He explained that his pension would not be affected if he were to submit his Night Shift Differential Request forms right before he retired.

On redirect-examination, Respondent explained that he did not make an omitted entry in the Movement Log because he wanted to ensure that all entries were

chronologically correct since such entries might be used in future criminal cases.

Respondent also explained that DETF members used the office scanner to scan "job-related items as well as personal items." At the time that Respondent printed the doctored photograph at issue he did not believe anyone would be offended by it.

### FINDINGS AND ANALYSIS

#### Specification No. 1

Respondent stands charged herein in that while assigned to the Drug Enforcement Task Force, on or about January 2, 2009, January 6, 2009 and January 26, 2009, he did utilize a Department computer in an inappropriate manner, to wit: said Detective downloaded pornographic material from the internet which was not related to the official business of the Department. Respondent pleaded Guilty to this Specification.

Respondent acknowledged that he downloaded an issue of Playboy magazine to his computer to share information it contained on drug trafficking with his colleagues. He admitted, however, that he also had a Kim Kardashian sex tape and an edition of Hustler magazine downloaded to his computer which had no relevance to his job.

Accordingly, because Respondent pleaded Guilty to Specification No. 1 he is found Guilty of Specification No. 1.

#### Specification No. 2

Respondent stands charged herein in that on or about February 4, 2009, he did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Detective destroyed his command's original Movement Sheet

without authority to do so, and printed a new sheet upon which he wrote movement information previously entered on the original Movement Sheet by two other members of the service. Respondent pleaded Guilty to this Specification.

Respondent testified that on the incident date at approximately 11:00 a.m., he was assigned to go out with Immigration and Customs Enforcement. Believing that he was the first one out of the office, Respondent typed his location on a Movement Log template he had on his computer and printed it out. When he realized that other members had made entries before him, he transcribed the previous entries "word for word" from the original Movement Log onto the new one he had created. Respondent stated that he did not believe he did anything wrong, but acknowledged that he should not have destroyed the original Movement Log to create a new one. IAB investigator Michael Rothenbucher testified that he believed Respondent destroyed the original Movement Log because Respondent had gone somewhere, forgot to sign out and was "blocked out" on the Movement Log by another detective's signature. Otherwise, this Court finds it hard to believe why Respondent would retype all of the entries on a movement sheet when he could have just added his information to the original Movement Sheet once he realized that a Movement Sheet already existed.

Accordingly, because Respondent pleaded Guilty to Specification No. 2 he is found Guilty of Specification No. 2.

### Specification No. 3

Respondent stands charged herein in that on or about February 13, 2009, he did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the

Department, to wit: said Detective, scheduled to perform a tour of 1000 hours to 1800 hours tour of duty, changed his tour without permission and performed an unauthorized tour of duty from 0600 hours to 1400 hours. Respondent pleaded Guilty to this Specification.

Respondent testified that he had previous approval from his supervisor, Sergeant Hoehl to work two tours a week from 6:00 a.m. to 2:00 p.m. Respondent, however, acknowledged that Hoehl required Respondent to email him in advance when he was going to work the earlier tour and he did not get permission from Hoehl in advance.

Accordingly, because Respondent pleaded Guilty to Specification No. 3 he is found Guilty of Specification No. 3.

#### Specification No. 4

Respondent stands charged herein in that on or about the date indicated in Specification No. 1, he did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Detective while performing the unauthorized tour indicated in Specification No. 2, used Department office equipment to superimpose his face onto family photographs belonging to a Drug Enforcement Administration Agent assigned to Detective's command without permission to do so. Respondent pleaded Guilty to this Specification.

Respondent testified that he was playing a prank on one of his coworkers and jokes were played by many of his coworkers in the command. During his break time at work, he superimposed his face on the photograph of his coworker's husband on two pictures that she had on her desk. Respondent said that he Photoshopped the images, cut

them out and placed them over the photographs on the desk and that it took him less than 20 minutes to do this. Respondent acknowledged that he used Department equipment to perform this prank without permission.

Accordingly, because Respondent pleaded Guilty to Specification No. 4 he is found Guilty of Specification No. 4.

#### Specification No. 5

Respondent stands charged herein in that on or about December 12, 2008 through January 11, 2009, he did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Detective failed to submit his Night Shift Differential Request-Uniform reports in a timely manner when he submitted some of the reports two (2) years after the date of the actual performance of the night shift. Respondent is found Guilty.

Evidence adduced at trial established that Respondent had worked late and was entitled to extra pay which is known as night shift differential in September 2005. DX 1 is a copy of Respondent's pay inquiry which shows that the night shift differential earned in September 2005 was not paid to him until December 2008. Rothenbucher testified that during a December 2009 official Department interview regarding this matter, Respondent stated that a detective in payroll had informed him that requests for night shift differential can be submitted late, and he wanted to submit his requests before he retired to increase his pension. Rothenbucher also stated that Respondent said his commanding officer wrote a memorandum on his behalf so that he could submit his requests years late, but Respondent never presented him with a copy of the memorandum.



At another point during his official Department interview and at trial, however, Respondent stated that in August 2005 while assigned to the Auto Crime Division, a new supervisor directed him to submit his outstanding request forms or he would not be able to work overtime. Respondent said that within two months of the order, he submitted all of his forms and had them signed by his timekeeper and commanding officer. He said he was transferred out of the unit in 2007 and could not explain why he was not paid for the night shift differential until December 2008. Respondent submitted no documentation to the Court to support these claims.

When questioned as to why he did not submit the night shift differential forms at the time the pay was earned, Respondent stated that he did not believe that he was required to do so. He further stated that he did not intend to submit them because the pay was insubstantial. He also said that it was not his intention to hold on to the forms until he got closer to retirement. However, upon review of Respondent's Pay Inquiry (DX 1), the Court notes that Respondent had 17 dates in 2005 when he earned night shift differential pay for a dollar amount of \$159.61 which he was not paid for until 2008.

The Court finds Respondent's statement to be without merit. If he had no intention of submitting the forms at all because the pay was not substantial, he would not have prepared them in the first place and held on to them for years. He stated in his interview that someone told him he could submit them closer to retirement and he agreed that he thought he was not required to submit the forms at the time the pay was earned. This again explains why a year after earning the night shift differential pay he still had outstanding request forms. Rothenbucher testified that it was common practice for members of the service to submit night shift differential requests the month that they

worked late or the following month and it takes the Department a month or two to process the requests.

The Court takes judicial notice of the fact that the Administrative Guide, specifically Procedure No. 324-02 which deals with “Payroll Changes and Deductions” states under the Night Shift Differential section page two, paragraph 7 in pertinent part:

*Submit NIGHT SHIFT DIFFERENTIAL REQUEST to the command timekeeper at the end of each month.* (Emphasis added).<sup>1</sup>

Respondent submitting his request two years after the pay was earned was not in compliance with Department guidelines. There was also no evidence in the record that the Department made an error resulting in the delayed processing of Respondent’s request for night shift differential pay.

Respondent also argued that this administrative violation was beyond the 18-month statute of limitation because the pay was earned in 2005. The Department argued that the misconduct occurred when Respondent was paid and Respondent was paid by the Department on December 12, 2008. Since Respondent was served with Charges and Specifications on June 29, 2010, the Department contends the Charge was within the 18 month statute of limitations. The Court agrees.

Accordingly, Respondent is found Guilty of Specification No. 5

### PENALTY

In order to determine an appropriate penalty, Respondent’s service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent

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<sup>1</sup> Although this procedure remains in the Administrative Guide (effective June 1, 2005), Night Shift Differential Request forms are no longer used due to the implementation of the CityTime payroll system in March 2011.

was appointed to the Department on July 5, 1989. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found Guilty of utilizing a Department computer in an inappropriate manner by downloading pornographic material; destroying the command's original Movement Sheet and creating a new one; changing his tour without permission and performing an authorized tour; while performing the unauthorized tour, using a Department computer to superimpose his photograph on family photographs of a colleague assigned to his command without permission; and submitting Night Shift Differential Requests two years after actual performance of the night shift.

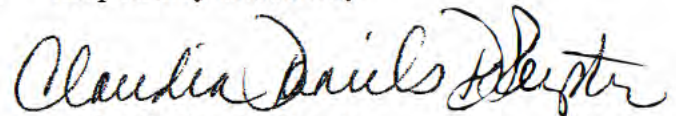
The Assistant Department Advocate asked for a penalty of the forfeiture of 50 vacation days. To support this penalty, the Assistant Department Advocate cited the following cases: Disciplinary Case No. 83188/07, where a 28-year member of the Department with no prior disciplinary record forfeited 30 vacation days for viewing pornographic material on the Department computer; Disciplinary Case Nos. 82424/06 and 82694/07, where a six-year member of the Department with no prior disciplinary history forfeited 35 vacation days for a domestic situation in which he altered photographs and used Department computers for unrelated business of the Department. With respect to the destruction of the Movement Sheet, the Department cited Disciplinary Case No. 82105/06, where a 14 year member of the Department with no prior disciplinary record destroyed Department property and forfeited a penalty of 29 vacation days.

Respondent pleaded Guilty to Specification Nos. 1 through 4 and then attempted to undo his Guilty plea by stating that he did not believe he did anything wrong in each instance. In Specification No. 1, he admitted that he downloaded pornographic material but did not view all of the material that he downloaded. In Specification No. 2, he thought he did nothing wrong by creating a new Movement Sheet when he learned that one existed and then he destroyed the original sheet. In Specification No. 3, he acknowledged that he did not get permission from his supervisor to change his tour, but then argued he had prior approval via an email. Yet the email specifically required Respondent to notify his supervisor via email before changing his tour, which Respondent could not state for certain that he had done. With respect to Specification No. 4, Respondent admitted to superimposing his face on the photographs, but he said he used a scanner that others in the office used for business and personal matters.

Respondent throughout the trial did not seem to truly accept his misconduct in each instance and attempted to explain away his wrongdoing despite obvious errors in his judgment. Based on the cited cases, the Respondent's lack of insight into his misconduct and his prior disciplinary record, a greater penalty is warranted here.

Accordingly, I recommend that Respondent forfeit 60 vacation days to resolve the Charges in this matter.

Respectfully submitted,



Claudia Daniels-DePeyster  
Assistant Deputy Commissioner Trials

**APPROVED**  
OCT 16 2012  
  
RAYMOND W. KELLY  
POLICE COMMISSIONER

POLICE DEPARTMENT  
CITY OF NEW YORK

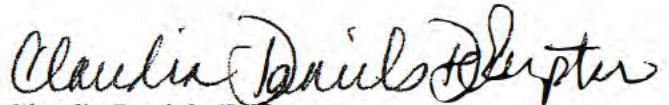
From: Assistant Deputy Commissioner – Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
DETECTIVE BOBBY PARTAP  
TAX REGISTRY NO. 895827  
DISCIPLINARY CASE NO. 86557/10

In 2009 and 2010, Respondent received an overall rating of 4.0 “Highly Competent” on his annual performance evaluation. He was rated 3.5 “Highly Competent/Competent” in 2008. He has been awarded one medal for Meritorious Police Duty. [REDACTED]

[REDACTED] Based on his overall record, Respondent was placed on Level-II Discipline Monitoring in July 2010.

Respondent has been the subject of one prior disciplinary adjudication. In 2005, he forfeited 23 vacation days for engaging in unauthorized off-duty employment, conducting personal business while on duty, and utilizing Department equipment for that personal business.

For your consideration.



Claudia Daniels-DePeyster  
Assistant Deputy Commissioner Trials